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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Policies and Rules Concerning
Toll Fraud

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CC Docket No. 93-292

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF
TELE-COMMUNICATIONS ASSOCIATION

Tele-Communications Association ("TCA"), by its attorneys, respectfully submits its comments regarding the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.¹ TCA commends the Commission for recognizing that a comprehensive new approach to toll fraud is needed, and as detailed below, urges the Commission more equitably to apportion responsibility for toll fraud among customers, carriers, and CPE manufacturers.

I. INTRODUCTION

TCA is an association of telecommunications managers, whose members include nearly 1000 small and large businesses, government agencies, and non-profit institutions. Because toll fraud is an endemic problem potentially affecting virtually every user of the public switched network, TCA is vitally interested in the Commission's Notice.

¹ FCC 93-496 (released Dec. 2, 1993)

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To date, the marketplace has not developed an adequate response to toll fraud. Under tariff provisions that purport to hold customers fully liable for unauthorized usage, many carriers have been slow to develop real-time monitoring, blocking and screening capabilities, and to take measures to enhance the security of their own networks. Moreover, despite efforts of the Commission, carriers, and user groups to educate customers regarding means of minimizing exposure to toll fraud,² the problem apparently has not been diminishing.

Against this background, the Notice properly recognizes that toll fraud must be addressed through a combination of measures. Customer education, warnings, improved monitoring and screening capabilities, and stricter law enforcement are important components of a serious anti-fraud program. The cornerstone of such a program, however, must be a clearly articulated Commission policy that apportions responsibility for toll fraud in a manner that creates appropriate and equitable incentives to prevent unauthorized usage. TCA will detail below the elements of such a policy.

² For example, TCA, working with AT&T, has developed and disseminated a detailed pamphlet suggesting means by which customers can identify and deter toll fraud. A copy of this pamphlet is attached as Appendix A hereto.

II. **THE COMMISSION SHOULD REQUIRE LOCAL EXCHANGE CARRIERS, LONG DISTANCE CARRIERS, EQUIPMENT MANUFACTURERS, AND CUSTOMERS TO TAKE SPECIFIC STEPS TO MINIMIZE TOLL FRAUD.**

In its most prevalent form, toll fraud involves the abuse of services and products provided by several parties. Unauthorized calls generally are initiated over local exchange facilities. These calls often are directed to an 800 number corresponding to a PBX located on a customer's premises. The 800 service is provided by a long distance carrier. If the calling party uses a valid authorization code, the PBX will transfer the call to an outbound line that may be used to make domestic or international calls. These calls also are handled by a long distance carrier.

Each of these parties -- LECs, IXC's, equipment manufacturers, and customers - is uniquely capable of taking measures to safeguard its link of the "fraud chain."³ Consequently, the responsibility for controlling toll fraud must be shared in a manner that requires each party to do what it can. TCA suggests below specific steps that each party should be compelled to follow in an effort to minimize fraud:

Local exchange carriers. Local exchange carriers can assist in preventing fraud by making certain blocking and screening services widely available. First, as the Commission has proposed in CC Docket No. 91-35, the LECs should be required to provide international call blocking to all business customers (not just aggregators). As TCA explained in its Reply Comments in that proceeding, "the availability of

³ See Notice at ¶ 25.

international direct dial call blocking to non-aggregator business customers is a useful means of minimizing the significant costs of remote access toll fraud for users who do not normally make international calls."⁴ TCA also showed that extending international blocking services to all business customers would be technically and economically feasible, and that LEC objections to offering such services appear to apply, if at all, only in the residential context.⁵

Second, also as proposed in Docket No. 91-35, the LECs should be directed to offer Originating Line Screening ("OLS") and Billed Number Screening ("BNS") services in their federal tariffs.⁶ Although these services often are available under state tariffs, federal tariffing would ensure their widespread, uniform availability and be consistent with the jurisdictional nature of toll fraud.

Third, the Commission should require the LECs to preserve the use of "1" as a toll indicator once interchangeable NPAs have been implemented in 1995. Currently, each LEC is essentially free to determine a dialing plan for use with interchangeable NPAs. Most apparently will preserve the use of 1 to indicate both intra-NPA and inter-NPA toll calls. Some, however -- including Pacific Bell -- will allow many toll calls to be dialed without the use of 1. The unavailability of 1 as a toll indicator will preclude users from utilizing one of the simplest means of preventing unauthorized long

⁴ Reply Comments of TCA, CC Docket No. 91-35, filed June 9, 1993, at 5.

⁵ Id. at 5-7.

⁶ See Notice at 19 n.49.

distance calls: programming their PBXs to block 1+ calls from specific extensions or authorization codes.⁷

Long distance carriers. As the Commission suggests in the Notice, it is unreasonable for IXC's to seek to hold customers responsible for unauthorized usage when the carriers have the capability to detect and halt such usage before users even become aware of it.⁸ All long distance carriers can provide real-time monitoring of both inbound (800) and outbound calls. Consequently, such monitoring should be made universally available as an inherent capability of interexchange offerings. Indeed, TCA understands that some carriers already make these services available to some users at no charge. This practice indicates that the incremental cost of monitoring likely is very small, and also suggests that universal availability of this feature is necessary to assure compliance with Sections 201(b) and 202(a) of the Communications Act.

In addition, TCA agrees with the Commission that long distance carriers should be required to provide explicit warnings to customers about the fraud risks inherent in particular service offerings.⁹ Such warnings would have been most beneficial several

⁷ Further details on this issue are provided in Appendix B, which is a letter from several user groups, including TCA, to the Commission.

⁸ Notice at ¶ 26.

⁹ Notice at ¶ 24.

years ago, before many customers became aware of the prevalence of toll fraud.¹⁰

Nonetheless, warnings may still serve a useful purpose today, if they are sufficiently detailed to allow users to compare the relative susceptibility to fraud of different carriers' offerings.

Equipment manufacturers. TCA concurs with the Commission that PBX manufacturers should be required to provide toll fraud warnings to their customers.¹¹ The Commission should expand this obligation, however, by directing manufacturers to advise customers what features of their equipment may be utilized to minimize exposure to unauthorized usage. For example, manufacturers should inform customers how to disconnect calls after a pre-defined number of access attempts, to disable access to outside lines through voice mail and attendant features, and change pre-set codes and default codes.

Manufacturers should also be given incentives to incorporate known deterrents to toll fraud, such as, dial back modems, security gateways, and recognition devices into PBXs they manufacture. Incentives could take the form of reduced liabilities for toll fraud when such devices and features are provided and customers are advised how to utilize them to minimize toll fraud.

¹⁰ The failure to warn is highly relevant to the multitude of pending fraud cases that arose from unauthorized usage occurring several years ago. If failure to warn is unreasonable today -- which it is -- then it was even more unreasonable two or more years ago, when the risks of fraud were understood by carriers but were far less widely known to the public. Consequently, tariff liability provisions that do not contain explicit warnings should not be enforced against customers in these pending cases.

¹¹ Notice at ¶ 40.

In addition, manufacturers should be given incentives to minimize fraud accomplished through the remote access maintenance port (which is a relatively common point of entry into the PBX, because many manufacturers use standardized, well-known access codes). The simplest way to create such incentives would be to hold the PBX manufacturer liable for any unauthorized usage occurring over that port. The prospect of such liability would encourage manufacturers to make maintenance ports more secure, for example by using caller-paid rather than 800 access or employing site-specific authorization codes that are changed regularly.

Customers. TCA fully understands that customers must share the responsibility for protecting telecommunications systems. Because each user's requirements are different, however, there is a need for significant flexibility in approaching toll fraud. Thus, some users may be able to block remote access calls to international locations or specific area codes, while others may have legitimate needs to assure unrestricted availability to all destinations. Similarly, some users may be capable of sharing 800 remote access numbers with customer service or billing inquiries during business hours, or using live operators after hours or on weekends, while others may not be able to do so.

Nonetheless, there are certain measures that, while potentially burdensome, could be widely employed to minimize exposure to toll fraud. Indeed, large users and carriers sometimes include similar commitments in service agreements as a means of apportioning responsibility between the carrier and the customer. Consequently, the

Commission should provide that any customer complying with the following requirements will have discharged its obligation to minimize toll fraud:

- The customer maintains an accurate list of all employees and addresses getting remote maintenance and DISA authorization codes.
- The customer controls the transfer of codes between employees.
- The customer provides timely notification to the carrier to disable an authorization code when the customer has reason to believe the code is compromised.
- The customer follows the carrier's and manufacturer's recommended minimum requirements regarding the format and length of authorization codes, frequency those codes and access numbers are changed, suppression of a portion of the code or access number, use of silent prompts rather than tone prompts, and disabling access when requested by the carrier because it believes access has been compromised.
- In those cases where maintenance, operation, or administration of the PBX is provided under contract, provisions of such a contract should address these customer obligations.
- The customer must cooperate with the carrier to investigate and prosecute instances of unauthorized usage.

III. LIABILITY MUST BE APPORTIONED IN A MANNER THAT CREATES APPROPRIATE INCENTIVES TO PREVENT UNAUTHORIZED USAGE.

By discharging the responsibilities set forth above, carriers, manufacturers, and customers can work together to minimize the incidence of toll fraud. Nonetheless, unauthorized usage likely will remain a significant problem, and the Commission consequently must address the liability issue.

Existing Commission precedents place liability for toll fraud almost exclusively on customers. This approach is fundamentally unsound. It forces users -- who are poorly situated to identify and control unauthorized usage -- to bear massive liability. Service providers, in contrast, make a profit on unauthorized calls and therefore face no pressure to safeguard their own networks.

To create proper incentives, the Commission must fundamentally alter the current assignment of liability for unauthorized usage. To this end, the Commission should state that it is unreasonable to hold customers liable for toll fraud where they have discharged all of the obligations set forth above and the fraud was not perpetrated by an employee.¹² If the fraud is perpetrated by an employee, the customer's liability should cease fifteen minutes after it notifies the carrier to disable the code. Where the customer has reason to believe that a code is compromised, lost or stolen, the customer should be liable only for the first fifteen minutes of unauthorized usage after it notifies the carrier.¹³

Finally, whenever a customer is legitimately liable for unauthorized usage, it should be required to pay only the long distance carrier's actual out-of-pocket costs. In most cases, such costs should be limited to access charges plus any incremental

¹² In addition, as discussed above, customers should not be held liable when the fraud occurs over the maintenance port to the customer's PBX.

¹³ As noted in the previous section of these comments, some service agreements already incorporate similar customer obligations and provide that the carrier will bear liability if the customer complies. This demonstrates that (1) the rule advocated by TCA is realistic, and (2) serious questions of discrimination would arise if smaller users remained subject to toll fraud liability while larger customers, who pay less for service, do not.

expenses incurred to carry the fraudulent calls. It is inequitable and unnecessary for the carrier to profit from toll fraud, and removing the profit element will reinforce incentives for IXC's to safeguard their networks.

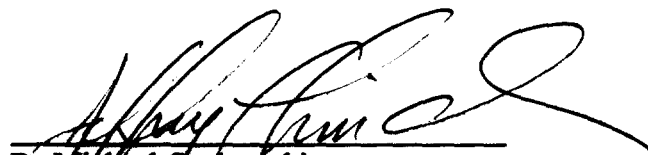
IV. CONCLUSION

For the foregoing reasons, the Commission should require LECs, IXC's, equipment manufacturers, and customers to take specific steps to minimize toll fraud. In addition, it should prescribe that any customer that has discharged its obligations will be absolved from liability for unauthorized usage, and that where customers may legitimately be held liable, the appropriate measure of damages is the carrier's direct, out-of-pocket costs.

Respectfully submitted,

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